



west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Oak Hill MHP, LLC
Matthew Raynor
10006 Hammock Bend
Chapel Hill, NC 27571

DATE: March 16, 2016

ORDER NO.: 8502

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Oak Hill MHP, LLC (hereinafter "Oak Hill").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Oak Hill operates a sewage package plant located near Charles Town, Jefferson County, West Virginia. Oak Hill was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550137, on June 7, 2011. The WV/NPDES Permit was administratively extended until March 31, 2016.
2. On November 11, 2015, WVDEP personnel conducted a review of facility records from the time period of the 4th quarter of 2013 through the 3rd quarter of 2015. During this review, the following exceedances of Oak Hill's WV/NPDES permit were observed and documented:
 - a. Section B.1-Oak Hill failed to submit sludge reports for the previous two (2) years.
 - b. Section A.2 – Two (2) Biochemical Oxygen Demand (BOD) exceedances were observed and documented during the 3rd quarter of 2015.
 - i. Moderate – One (1) for the maximum daily result of 60 mg/l, which is above the maximum daily limit of 20 mg/L.

- ii. Major – One (1) for the average result of 60 mg/L, which is above the average limit of 10 mg/L.
3. On January 28, 2016, WVDEP personnel and representatives of Oak Hill met to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Oak Hill shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Oak Hill shall immediately begin properly submitting sludge reports electronically, in accordance with the WV/NPDES permit.
3. Because of Oak Hill's permit violations, Oak Hill shall be assessed a civil administrative penalty of three thousand three hundred eighty dollars (\$3,380) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Oak Hill hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Oak Hill agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Oak Hill does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Oak Hill other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Oak Hill shall have the burden of proving that the delay was caused by

circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Oak Hill becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Oak Hill shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Oak Hill intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Oak Hill (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Oak Hill of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Oak Hill to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Oak Hill, its successors and assigns.
7. This Order shall terminate upon Oak Hill's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RECEIVED

APR 07 2016

ENVIRONMENTAL
ENFORCEMENT


Matthew Raynor
Oak Hill MHP, LLC

4/4/16
Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Oak Hill MHP, LLC

Receiving Stream:

Treatment System Design Maximum Flow: 0.015 MGD

Treatment System Actual Average Flow: 0.007129 MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			2a	2bi	2bii									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	0	1	1									
c)	Sensitivity of the Environment	0 to 3	0	1	1									
d)	Length of Time	1 to 3	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	0	1	1									
	Average Potential for Harm Factor		0.4	1	1	No	No	No	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	2	3									

Potential for Harm Factors:

1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)

1)d - Length of Time of Violation

1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by $\geq 41\%$ and $\leq 300\%$ for Avg. Monthly, $\geq 101\%$ and $\leq 600\%$ for Daily Max., exceed numeric WQ standard by $\geq 101\%$ and $\leq 600\%$ or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

[illegible]

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

[illegible]

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$690
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$400		\$400
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)		40	(\$2,760)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$690)
6.2.b.3 - Cooperation with the Secretary		10	(\$690)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$3,020)
Penalty =			\$3,880

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$400
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$400
Comments: Avoided cost of sampling/submittal of two (2) sludge reports.	